

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

V.

IVY CAPITAL, INC., *et al.*,

Defendants, and

CHERRYTREE HOLDINGS, LLC, *et al.*,

Relief Defendants.

Case No. 2:11-cv-00283-JCM-
GWF

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION AND
MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (the “FTC” or the “commission”), filed a complaint for permanent injunction and other equitable relief, including redress to consumers and disgorgement of ill-gotten gains (the “complaint”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. §§ 6101-6108. The FTC and defendant Kyle G. Kirschbaum (“Mr. Kirschbaum”), by and through their counsel, hereby stipulate to the entry of, and request the court to enter, this stipulated final judgment and order for permanent injunction and monetary relief (“order”), to resolve all matters of dispute between them in this action.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

- 1
2 1. This is an action by the commission instituted under Sections 13(b) and 19 of the
3 FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing Act, 15 U.S.C. §§
4 6101-6108. The commission has authority to seek the relief contained herein;
- 5 2. The complaint states a claim upon which relief may be granted under Section 5(a) of
6 the FTC Act, 15 U.S.C. § 45(a), and the FTC's trade regulation rule entitled the
7 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310;
- 8 3. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and
9 1345, 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b);
- 10 4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. §
11 53(b);
- 12 5. The activities of Mr. Kirschbaum, as alleged in the complaint, are in or affecting
13 commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
- 14 6. Mr. Kirschbaum has entered into this order freely and without coercion, and he
15 acknowledges that he has read the provisions of this order, understands them, and is
16 prepared to abide by them;
- 17 7. The FTC and Mr. Kirschbaum, by and through their counsel, have agreed that the
18 entry of this order resolves all matters in dispute between them arising from the
19 complaint up to the date of entry of this order;
- 20 8. This order is for settlement purposes only and does not constitute and shall not be
21 interpreted to constitute an admission by Mr. Kirschbaum or a finding that the law
22 has been violated as alleged in the complaint, or that the facts alleged in the
23 complaint, other than the jurisdictional facts, are true;
- 24 9. Mr. Kirschbaum waives all rights to seek appellate review or otherwise challenge or
25 contest the validity of this order. Mr. Kirschbaum further waives and releases any

claim he may have against the FTC, its employees, representatives, or agents concerning the prosecution of this action to the date of this order;

10. Mr. Kirschbaum agrees that this order does not entitle him to seek or obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this order. Each settling party shall bear its own costs and attorneys' fees; and

11. Entry of this order is in the public interest.

DEFINITIONS

For the purpose of this order, the following definitions shall apply:

1. "And" and "or" shall be understood to have both conjunctive and disjunctive meanings.
2. "Asset" means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares or stock, securities, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), cash, trusts, including but not limited to asset protection trusts, and reserve funds or other accounts associated with any payments processed on behalf of any defendant, including, but not limited to, such reserve funds held by a payment processor, credit card processor, or bank.
3. "Assisting others" includes, but is not limited to, providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, charging consumers for products or services, or receiving or responding to consumer complaints; (2) drafting or providing, or arranging for the drafting or provision of, any promotional material; (3) providing

names of, or assisting in the generation of, potential customers; (4) performing promotional or marketing services of any kind, or recruiting affiliates; or (5) processing credit and debit card payments.

4. **"Business coaching program"** means any program, plan, product, or service, including, but not limited to, those related to work-at-home-opportunities, that is represented, expressly or by implication, to train or teach a participant or purchaser how to establish a business or earn money or other consideration through a business. "Business coaching" shall not include providing services other than training or teaching, including, but not limited to, website design and search engine optimization.
5. **"Commission"** or **"FTC"** means the Federal Trade Commission.
6. **"Corporate defendants"** mean Ivy Capital, Inc., Fortune Learning System, LLC, Vianet, Inc., 3 Day MBA, LLC, Global Finance Group, LLC, Virtual Profit, LLC, ICI Development, LLC, Ivy Capital, LLC, Logic Solutions, LLC, Oxford Debt Holdings, LLC, Revsynergy, LLC, and Sell It Visions, LLC; and their successors, assigns, affiliates or subsidiaries.
7. **"Defendants"** mean the individual defendants and the corporate defendants, individually, collectively, or in any combination. The relief defendants are expressly excluded from this definition.
8. **"Document"** is synonymous in meaning and equal in scope to the usage of the term in the Federal Rules of Civil Procedure 34(a), and includes writing, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten

1 notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business
2 canceled checks and check registers, bank statements, appointment books, computer
3 records, and other data compilations from which information can be obtained and
4 translated, if necessary, through detection devices into reasonably usable form. A
5 draft or non-identical copy is a separate document within the meaning of the term.

6 9. **"Individual defendants"** mean Kyle G. Kirschbaum, John H. Harrison, and Steven
7 E. Lyman.

8 10. **"Material"** means likely to affect a person's choice of, or conduct regarding, goods
9 or services.

10 11. **"Non-disparagement agreement"** means any contract or agreement that purports to
11 prohibit purchasers from providing information, making statements, or otherwise
12 communicating in any way about their experiences with any business coaching
13 program or related goods and services, including but not limited to providing
14 information to state, federal or non-governmental entities, filing complaints with any
15 consumer protection entity, and engaging in discussions with other consumers
16 through online forums or any other means.

17 12. **"Person"** means a natural person, organization, or other legal entity, including a
18 corporation, partnership, proprietorship, association, cooperative, government or
19 governmental subdivision or agency, or any other group or combination acting as an
20 entity.

21 13. **"Relief defendants"** mean Cherrytree Holdings, LLC, S&T Time, LLC, Virtucon
22 LLC, Kierston Kirschbaum, Melyna Harrison, and Tracy Lyman.

23 14. **"Representatives"** mean defendants' officers, agents, servants, employees, and
24 attorneys, and any other person or entity in active concert or participation with them
25 who receives actual notice of this order by personal service or otherwise.

I.

IT IS THEREFORE ORDERED that defendants and their representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are **hereby permanently restrained and enjoined from:**

- ## II.

IT IS FURTHER ORDERED that defendants and their representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are **hereby permanently restrained and enjoined from:**

- 6

1 B. Failing to disclose or to disclose adequately to consumers material aspects of any refund
2 policy; and

3 C. Requiring consumers to sign a non-disparagement agreement as a condition of receiving
4 a refund.

5 **III.**

6 **PROHIBITIONS AGAINST DECEPTIVE AND ABUSIVE TELEMARKETING
PRACTICES**

7 **IT IS FURTHER ORDERED** that, in connection with telemarketing, defendants, and
8 their representatives, whether acting directly or through any entity, corporation, subsidiary,
9 division, director, manager, member, affiliate, independent contractor, accountant, financial
10 advisor, or other device, **are hereby permanently restrained and enjoined from** engaging in
11 or causing or assisting other persons to engage in, violations of any provision of the TSR,
12 including, but not limited to, the following:

13 A. Misrepresenting, directly or by implication, in the sale of goods or services, any material
14 aspect of the performance, efficacy, nature or essential characteristics of their products
15 and services, in violation of Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. §
16 310.3(a)(2)(iii);

17 B. Failing to disclose or to disclose adequately, in a clear and conspicuous manner, all
18 material terms and conditions of any refund policy, in violation of Section 310.3(a)(1)(iii)
19 of the TSR, 16 C.F.R. § 310.3(a)(1)(iii), including that consumers must request a refund
20 within a specified time period after purchase;

21 C. Misrepresenting, directly or by implication, material aspects of the nature and terms of
22 any refund policy in violation of Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. §
23 310.3(a)(2)(iv), including that they will provide refunds to consumers who request one
24 within a specified time period;
25

1 **D.** Initiating, or causing others to initiate, outbound telephone calls to telephone numbers on
2 the National Do Not Call Registry (the "DNC Registry") in violation of Section
3 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), unless

4 1. the seller has obtained the express agreement, in writing, of such person to
5 place calls to that person. Such written agreement shall clearly evidence such
6 person's authorization that calls made by or on behalf of a specific party may
7 be placed to that person, and shall include the telephone number to which the
8 calls may be placed and the signature of that person; or

9 2. the seller has an established business relationship with such person and that
10 person has not previously stated that he or she does not wish to receive
11 outbound telemarketing calls made by or on behalf of the defendant or any
12 other individual or entity; and

13 **E.** Calling numbers on the DNC Registry without paying the annual fee necessary to access
14 the list of numbers on the DNC Registry in violation of Section 310.8 of the TSR, 16
15 C.F.R. § 310.8.

16 **IV.**
17 **COOPERATION PROVISION**

18 **IT IS FURTHER ORDERED** that Mr. Kirschbaum shall, in connection with this action
19 or any subsequent investigations related to, or associated with, the transactions or the
20 occurrences that are the subject of the complaint, cooperate in good faith with the FTC and any
21 other governmental agency or entity, and appear at such places and times as the FTC or any other
22 governmental agency or entity shall reasonably request, after written notice, for interviews,
23 conferences, pretrial discovery, review of documents, and for such other matters as may be
24 reasonably requested by the FTC or any other governmental agency or entity. If requested in
25 writing by the FTC or any other governmental agency or entity, Mr. Kirschbaum shall appear

1 and provide truthful testimony in any trial, deposition, or other proceeding related to, or
2 associated with, the transactions or the occurrences that are the subject of the complaint, without
3 the service of a subpoena upon him.

4
5 **V.
MONETARY RELIEF**

6 **IT IS FURTHER ORDERED** that judgment is hereby entered in favor of the
7 commission and against Mr. Kirschbaum, jointly and severally with all other defendants found
8 liable in this case, in the amount of one hundred thirty million dollars (\$130,000,000), as
9 equitable monetary relief for consumer injury; provided, however, that subject to the provisions
10 of Section VI, this judgment shall be suspended as to Mr. Kirschbaum upon Mr. Kirschbaum's
11 completion of the requirements stated in subsections A, B, C and E of this section.

12 **A.** Effective upon the entry of this order, Mr. Kirschbaum shall surrender to the FTC all
13 control, title, dominion, and interest in the following assets:

- 14 1. All funds held in the Bank of America, N.A. account ending in 9390, in the name
15 of Kyle and/or Kierston Kirschbaum, individually or jointly;
16 2. The 2007 Cadillac Escalade [VIN 1gyfk63867r118434] registered to Kierston
17 Kirschbaum identified in Item 21 of the individual financial statement signed by
18 Kierston Kirschbaum, dated March 13, 2011; and
19 3. The 2006 BMW 750Li [VIN wbahn83546dt60428] registered to Mr. Kirschbaum
20 identified in Item 21 of the individual financial statement signed by Mr.
21 Kirschbaum, dated March 11, 2011.

22 **B.** Effective upon the entry of this order, Cherrytree Holdings, LLC shall surrender to the
23 FTC all control, title, dominion, and interest in the following assets:

- 24 1. All funds held in the Bank of America, N.A. accounts ending in 6232, 4576, and
25 4589, in the name of Cherrytree Holdings, LLC;

1 2. The residential property located at 1025 Coronado Peak Avenue, Las Vegas,
2 Nevada 89183, identified in Attachment 2 to Mr. Kirschbaum's Responses to
3 Supplemental Financial Questions, signed by Mr. Kirschbaum, dated July 11,
4 2011;

5 C. To effect the surrender of the funds identified in subsections V.A.1 and V.B.1, the court
6 directs that the entities holding the funds or their successors shall, within ten (10)
7 business days of the date of entry of this order, remit the funds to the commission by
8 certified check(s) or other guaranteed funds payable to the FTC, Financial Management
9 Office, or by wire transfer in accordance with directions provided by counsel for the
10 commission. To the extent any identified nonparty cannot comply with this subsection
11 without the assistance of Mr. Kirschbaum, such party must, within three (3) business days
12 of receiving this order, notify Mr. Kirschbaum and counsel for the commission of its
13 inability to comply. Such notification shall specify the actions by Mr. Kirschbaum that
14 are necessary to comply with this order. Mr. Kirschbaum shall immediately complete
15 any action necessary to facilitate the identified nonparty's ability to timely comply with
16 this subsection, and the failure of Mr. Kirschbaum to complete such action within ten
17 (10) days shall be deemed a violation of the order and interest at the rate prescribed in 28
18 U.S.C. § 1961(a) shall immediately begin to accrue.

19 D. In the event of default on any obligation to make payment under this order, interest,
20 computed pursuant to 28 U.S.C. § 1961(a) shall accrue from the date of default to the
21 date of payment. In the event such default continues for ten (10) calendar days beyond
22 the date the payment is due, the entire amount of the judgment, less any amounts
23 previously paid pursuant to this order, together with interest, shall immediately become
24 due and payable. Mr. Kirschbaum shall be liable for all payments required by this order
25 and any interest on such payments.

- 1 E. Immediately upon entry of this order, Mr. Kirschbaum shall deliver possession to the
2 receiver of the assets identified in subsections V.A.2-3 and V.B.2 (the
3 “Kirschbaum/Cherrytree assets”). The receiver is hereby directed to market and sell the
4 Kirschbaum/Cherrytree assets. Mr. Kirschbaum shall take all steps necessary to assist the
5 receiver in the sale of the Kirschbaum/Cherrytree assets and shall not add any
6 encumbrances on the Kirschbaum/Cherrytree assets. Any transfer fees, taxes, or other
7 payments mandated from the transferor under law shall be paid from the proceeds of each
8 sale at the time such asset is sold.
- 9 F. All funds paid pursuant to this order shall be deposited into a fund administered by the
10 commission or its agents to be used for equitable relief, including, but not limited to,
11 redress to consumers, and any attendant expenses for the administration of such equitable
12 relief. In the event that direct redress to consumers is wholly or partially impracticable or
13 funds remain after the redress is completed, the commission may apply any remaining
14 funds for such other equitable relief (including consumer information remedies) as it
15 determines to be reasonably related to the defendants’ practices alleged in the complaint.
16 Any funds not used for such equitable relief shall be deposited to the United States
17 Treasury as disgorgement. Mr. Kirschbaum shall have no right to challenge the
18 commission’s choice of remedies or the manner of distribution under this subsection.
- 19 G. No portion of any payment under the judgment herein shall be deemed a payment of any
20 fine, penalty, or punitive assessment.
- 21 H. Mr. Kirschbaum relinquishes all dominion, control, and title to the funds paid to the
22 fullest extent permitted by law. Mr. Kirschbaum shall make no claim to or demand for
23 return of the funds, directly or indirectly, through counsel or otherwise.
- 24 I. Mr. Kirschbaum agrees that the facts as alleged in the complaint filed in this action shall
25 be taken as true without further proof in any bankruptcy case or subsequent civil

1 litigation pursued by the commission to enforce its rights to any payment or money
 2 judgment pursuant to this order, including, but not limited to, a nondischargeability
 3 complaint in any bankruptcy case. Mr. Kirschbaum further stipulates and agrees that the
 4 facts alleged in the complaint establish all elements necessary to sustain an action
 5 pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and
 6 this order shall have collateral estoppel effect for such purposes.

7 **J.** In accordance with 31 U.S.C. § 7701, Mr. Kirschbaum is hereby required, unless he has
 8 done so already, to furnish to the commission his social security number, which shall be
 9 used for the purposes of collecting and reporting on any delinquent amount arising out of
 10 Mr. Kirschbaum's relationship with the government.

11 **K.** Mr. Kirschbaum agrees that he will not, whether acting directly or through any
 12 corporation, partnership, subsidiary, division, agent, or other device, submit to any
 13 federal or state tax authority any return, amended return, or other official document that
 14 takes a deduction for, or seeks a tax refund or other favorable treatment for, any payment
 15 made by him pursuant to this order.

16 VI. 17 RIGHT TO REOPEN

18 **IT IS FURTHER ORDERED** that:

19 **A.** The commission's agreement to, and the court's approval of, this order are expressly
 20 premised upon the truthfulness, accuracy, and completeness of Mr. Kirschbaum's
 21 financial statement dated March 10, 2011, his responses to supplemental financial
 22 questions, dated July 11, 2011, and his declaration dated June 30, 2012 (the "financial
 23 statements"), all of which Mr. Kirschbaum asserts are truthful, accurate, and complete.
 24 Mr. Kirschbaum and the commission stipulate that Mr. Kirschbaum's financial
 25 statements provide the basis for the monetary judgment in Section V of this order and

1 that the commission has relied on the truthfulness, accuracy, and completeness of Mr.
2 Kirschbaum's financial statements.

3 **B.** If, upon motion by the commission, this court finds that Mr. Kirschbaum has: (1)
4 materially misstated in his financial statements, the value of any asset; (2) made any
5 material misrepresentation or omitted material information concerning his financial
6 condition by failing to disclose any asset that should have been disclosed in his financial
7 statements; or (3) made any other material misstatement or omission in his financial
8 statements, the court shall terminate the suspension of the monetary judgment entered in
9 Section V. The court, without further adjudication, shall enter a modified judgment
10 holding Mr. Kirschbaum liable to the commission in the amount of one hundred thirty
11 million dollars (\$130,000,000) for equitable monetary relief, less any amounts turned
12 over to the FTC pursuant to Section V of this order. Upon such reinstatement of the
13 monetary judgment, the court shall make an express determination that the judgment
14 shall become immediately due and payable by Mr. Kirschbaum and the commission shall
15 be entitled to interest computed from the day of entry of this order at the rate prescribed
16 under 28 U.S.C. § 1961, as amended, on the unpaid balance. The commission shall be
17 permitted to execute on the judgment immediately after the suspension is lifted and
18 engage in discovery in aid of execution.

19 **C.** Mr. Kirschbaum acknowledges and agrees that: (1) this monetary judgment is equitable
20 monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment, or
21 forfeiture; (2) any proceedings instituted under this Section would be in addition to, and
22 not in lieu of, any other civil or criminal remedies as may be provided by law, including
23 any other proceedings that the FTC may initiate to enforce this order; and (3) all money
24 paid to satisfy the monetary judgment is irrevocably paid for purposes of settlement
25 between the parties.

1 D. Should this order be modified pursuant to this section, this order, in all other respects,
2 shall remain in full force and effect unless otherwise ordered by the court.

3 **VII.**

4 **PROHIBITION ON RELEASE OF CUSTOMER INFORMATION OR**
5 **CUSTOMER LISTS**

6 **IT IS FURTHER ORDERED** that the defendants and their representatives, whether
7 acting directly or through any corporation, partnership, subsidiary, division, agent, or other
8 device, are permanently restrained and enjoined from:

- 9 A. Disclosing, using, or benefitting from customer information, including the name, address,
10 telephone number, e-mail address, social security number, other identifying information,
11 or any data that enables access to a customer's account (including a credit card, bank
12 account, or other financial account), of any person that the defendants obtained prior to
13 entry of this order in connection with the advertisement, marketing, promotion, offering
14 for sale, or sale of any business coaching program; and
- 15 B. Failing to dispose of such customer information in all forms in their possession, custody,
16 or control within thirty (30) days after entry of this order. Disposal shall be by means
17 that protect against unauthorized access to the customer information, such as by burning,
18 pulverizing, or shredding any papers, and by erasing or destroying any electronic media,
19 to ensure that the customer information cannot practicably be read or reconstructed.

20 *Provided, however,* that customer information need not be disposed of if currently under the
21 control of the commission or the court-appointed receiver. Further, such information may be
22 disclosed, to the extent requested by a government agency or required by a law, regulation, or
23 court order.
24
25

**VIII.
LIFTING OF ASSET FREEZE**

IT IS FURTHER ORDERED that the freeze of Mr. Kirschbaum's and Cherrytree Holdings, LLC's assets set forth in the preliminary injunction entered by this court on March 25, 2011, shall be lifted to the extent necessary to turn over the Kirschbaum/Cherrytree assets as required by Section V of this order, and, shall be lifted permanently immediately upon completion of the turn-over.

**IX.
APPOINTMENT OF RECEIVER TO LIQUIDATE ASSETS**

IT IS FURTHER ORDERED that Robb Evans & Associates, LLC, the receiver appointed by prior orders of this court, is hereby appointed receiver for the purpose of taking the necessary steps to liquidate the Kirschbaum/Cherrytree assets turned over pursuant to Section V of this order, and pay any net proceeds to the FTC to satisfy the monetary judgment in this order. In carrying out these duties, the receiver shall be the agent of this court, shall be accountable directly to this court, and is authorized and directed to:

- A.** Perform all acts necessary to protect, conserve, preserve, and prevent waste or dissipation of the Kirschbaum/Cherrytree assets until their sale;
- B.** Sell the Kirschbaum/Cherrytree assets without further order of the court;
- C.** Enter into agreements in connection with the reasonable and necessary performance of the receiver's duty to sell the Kirschbaum/Cherrytree assets, including, but not limited to, the retention of assistants, agents, or other professionals to assist in the sale of these assets; and
- D.** Distribute to the commission, without further order of the court, the funds received from the sale of the Kirschbaum/Cherrytree assets.

**X.
COMPENSATION OF RECEIVER**

IT IS FURTHER ORDERED that the receiver and all personnel hired by the receiver, including counsel to the receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this order from the assets now held by, in the possession or control of, or which may be received by, the corporate defendants. The receiver shall apply to the court for approval of specific amounts of compensation and expenses, and must not increase the hourly rates used as the bases for such fee applications without prior approval of the court.

**XI.
ORDER ACKNOWLEDGMENTS**

IT IS FURTHER ORDERED that Mr. Kirschbaum obtain acknowledgments of receipt of this order:

- A. Within seven (7) days of entry of this order, Mr. Kirschbaum must submit to the commission an acknowledgment of receipt of this order sworn under penalty of perjury.
- B. For five (5) years after entry of this order, Mr. Kirschbaum for any business that he, individually or collectively with any other defendant named in the complaint, is the majority owner or directly or indirectly controls, must deliver a copy of this order to:
(1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in telemarketing; and (3) any business entity resulting from any change in structure as set forth in Section XII below. Delivery must occur within seven (7) days of entry of this order for current personnel. To all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Mr. Kirschbaum delivered a copy of this order, Mr. Kirschbaum must obtain, within thirty (30) days, a signed and dated acknowledgement of receipt of this order.

**XII.
COMPLIANCE REPORTING**

IT IS FURTHER ORDERED that Mr. Kirschbaum make timely submissions to the commission:

- A.** One (1) year after entry of this order, Mr. Kirschbaum must submit a compliance report, sworn under penalty of perjury. Mr. Kirschbaum must: (a) identify all telephone numbers and all e-mail, Internet, physical, and postal addresses, including all residences; (b) designate at least one telephone number and an e-mail, physical, and postal address as points of contact, which representatives of the commission may use to communicate with Mr. Kirschbaum; (c) identify all of his businesses by all of their names, telephone numbers, and physical, postal, e-mail, and Internet addresses; (d) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant named in the complaint; (e) identify all titles and roles in all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; (f) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership; (g) describe in detail whether and how he is in compliance with each section of this order; and (h) provide a copy of each order acknowledgment obtained pursuant to this order, unless previously submitted to the commission;
- B.** For ten (10) years following entry of this order, Mr. Kirschbaum must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:
1. the structure of any entity that he has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this

1 order, including: creation, merger, sale, or dissolution of the entity or any
2 subsidiary, parent, or affiliate that engages in any acts or practices subject to
3 this order.

4 2. Additionally, Mr. Kirschbaum must report any change in: (a) name, including
5 aliases or fictitious names, or residence address; or (b) title or role in any
6 business activity, including any business for which he performs services
7 whether as an employee or otherwise and any entity in which he has any
8 ownership interest, and identify its name, physical address, and Internet
9 address, if any.

10 C. Mr. Kirschbaum must submit to the commission notice of the filing of any
11 bankruptcy petition, insolvency proceeding, or any similar proceeding by or against
12 him within fourteen (14) days of its filing.

13 D. Any submission to the commission required by this order to be sworn under penalty
14 of perjury must be true and accurate and comply with 18 U.S.C. § 1746, such as by
15 concluding: "I declare under penalty of perjury under the laws of the United States of
16 America that the foregoing is true and correct. Executed on: ____" and supplying
17 the date, signatory's full name, title (if applicable), and signature.

18 E. Unless otherwise directed by a commission representative in writing, all submissions
19 to the commission pursuant to this order must be e-mailed to DEbrief@ftc.gov or sent
20 by overnight courier (not the U.S. Postal Service) to: Associate Director for
21 Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600
22 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin:
23 FTC v. Kyle G. Kirschbaum (X110017).
24
25

**XIII.
RECORDKEEPING**

IT IS FURTHER ORDERED that Mr. Kirschbaum must create certain records for ten (10) years after entry of this order, and retain each such record for ten (10) years. Specifically, Mr. Kirschbaum for any business in which he, individually or collectively with any other defendant named in the complaint, is a majority owner or controls either directly or through an agent or proxy, must maintain the following records:

- A.** Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B.** Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C.** Customer files showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;
- D.** Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E.** All records necessary to demonstrate full compliance with each provision of this order, including all submissions to the commission; and
- F.** A copy of each advertisement or other marketing material.

**XIV.
COMPLIANCE MONITORING**

IT IS FURTHER ORDERED that, for the purpose of monitoring Mr. Kirschbaum's compliance with this order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this order:

- A.** Within fourteen (14) days of receipt of a written request from a representative of the commission, Mr. Kirschbaum must: submit additional compliance reports or other

1 requested information, which must be sworn under penalty of perjury; appear for
2 depositions; and produce documents, for inspection and copying. The commission is
3 also authorized to obtain discovery, without further leave of court, using any of the
4 procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including
5 telephonic depositions), 31, 33, 34, 36, 45, and 69, provided that Mr. Kirschbaum,
6 after attempting to resolve a dispute without court action and for good cause shown,
7 may file a motion with this court seeking an order including one or more of the
8 protections set forth in Rule 26(c).

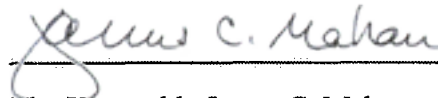
9 **B.** For matters concerning this order, the commission is authorized to communicate
10 directly with Mr. Kirschbaum. Mr. Kirschbaum must permit representatives of the
11 commission to interview any employee or other person affiliated with any defendant
12 who has agreed to such an interview. The person interviewed may have counsel
13 present.

14 The commission may use all other lawful means, including posing, through its
15 representatives, as consumers, suppliers, or other individuals or entities, to Mr. Kirschbaum or
16 any individual or entity affiliated with him, without the necessity of identification or prior notice.
17 Nothing in this order limits the commission's lawful use of compulsory process, pursuant to
18 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XV.
RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this order.

IT IS SO ORDERED:



The Honorable James C. Mahan

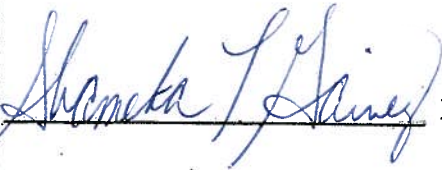
UNITED STATES DISTRICT JUDGE

December 20, 2012

DATED: _____

1 The parties consent to the terms and conditions set forth above and consent to entry of this
2 stipulated final judgment and order for permanent injunction and monetary relief at the court's
3 convenience and without further notice to the parties.

4
5 **FOR THE PLAINTIFF:**

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7
8 

9 Dated: 12/18/12

10
11 SHAMEKA L. GAINES
12 sgainey@ftc.gov
13 ROSS A. FELDMANN
14 rfeldmann@ftc.gov
15 Federal Trade Commission
16 600 Pennsylvania Avenue, NW, H-286
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202-326-2570 (Gainey)
202-326-2207 (Feldmann)
202-326-3395 (Fax)

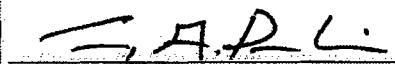
17 BLAINE T. WELSH
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22 Attorneys for Plaintiff

23 FEDERAL TRADE COMMISSION
24
25

1 **FOR THE DEFENDANT:**

2
3  Dated: 7-24-12
4 Kyle G. Kirschbaum
5
6

7  Dated: 7/25/2012
8 JEFFREY WILLIS, ESQ.
9 CHAD R. FEARS, ESQ.
10 CASEY G. PERKINS, ESQ.
11 SNELL & WILMER L.L.P.
12 3883 HOWARD HUGHES PARKWAY, SUITE 1100
13 LAS VEGAS, NEVADA 89169

14 Attorneys for Defendants
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Certificate of Service

I hereby certify that on December 18, 2012, I electronically filed the foregoing document with the clerk of the court using CM/ECF, which will send a notice of electronic filing to all counsel of record.

/s/ Shameka L. Gainey
Shameka L. Gainey